IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRTI PETITION NO.198 OF 2005

Shri Rajesh Ratanlal Kale]
Age - 40 Yrs., Occ : Now Nil]
Ex Judicial Magistrate (First]
Class) And Civil Judge,]
Junior Division, Court o.(II)]
Malegaon, District Nashik (M.S.)]... Petitioner.

versus

1. State of Maharashtra]
(Summons to be served on the]
Learned Additional Government]
Pleader appearing for the]
State of Maharashtra Under]
Order XXVII, Rule 4 of the]
Code of Civil Procedure,1908)]

2. The Principal Secretary]
Law and Judiciary Department]
(Summons to be served on the]
Learned Additional Government]
Pleader appearing for the]
State of Maharashtra Under]
Order XXVII, Rule 4 of the]
Code of Civil Procedure,1908)]

3. The Honourable Chief Justice]
Bombay High Court, Mumbai]
(Summons to be served on the]
Learned Additional Government]
Pleader appearing for the]
State of Maharashtra Under]
Order XXVII, Rule 4 of the]
Code of Civil Procedure,1908)]... Respondents.

Shri A.V.Anturkar i/by Smt.V.V.Bakre-Shastry for the Petitioner.

Shri A.A.Kumbhakoni, Associate Advocate General

with Shri Ms.P.S.Cardozo, AGP, for the Respondents.

CORAM : D.G.DESHPANDE

SMT.R.S.DALVI, JJ.

DATED : DECEMBER 05, 2006.

JUDGMENT [PER D.G.DESHPANDE,J.]

1. Heard Shri.Anturkar, learned advocate appearing for the petitioner and, Shri.Kumbhakoni, learned Associate Advocate General appearing for the respondents/State.

2. Petitioner was a Judicial Officer. He was working as a IIIrd Joint Civil Judge (Junior Division) and J.M.F.C., at Bhiwandi, District Thane from 3rd May 1999 till 6th March 2000. At that time one Shri R.A.Pawar was also working as a Joint Civil Judge (Junior Division) at Bhiwandi. Both of them were residing in the neighbourhood. A departmental enquiry came to be held against both of them on the basis of charges framed at the instance of the High Court though the then Registrar, Appellate Side. The charges against (1) Shri R.A.Pawar, Jt.C.J.J.D. Bhiwandi and (2) Shri R.R.Kale, 3rd Jt.C.J.J.D., Bhiwandi

- the petitioner herein are as under :-

No.1 of you are working as Jt.C.J.J.D. at Bhiwandi from 8th May 1998 till today.

No.2 of you were posted as 3rd Jt.C.J.J.D. at Bhiwandi from 3/5/1999 to 6/3/2000.

On or about 22.11.99 at about 10.00 to 11.00 p.m. No.2 of you under the influence of alcohol physically assaulted Balu alias Malu Morghe by a Hockey stick and also indulged in fisticuffs with No.1 of you.

On the same date, time and place, No.1 of you had under the influence of alcohol, abused and intimidated No.2 of you.

On the same date No.1 of you had abused and intimidated Shri N.K.Chavan, 2nd Jt.C.J.J.D. and J.M.F.C., Bhiwandi on phone.

On 30.11.99 No.2 of you expressed your

apologies to Shri P.V.Kakade, the then District and Sessions Judge, Thane (Now Hon'ble Judge of Bombay High Court) about the incident dated 22.11.99 and showed your willingness to give in writing that you would not repeat such incident and prayed for an opportunity to improve but when No.1 of you under his own hand submitted such writing, No.2 of you suddenly changed your stance and backed out from your admission.

All of your abovesaid acts of commission and omission, detail particulars of which can be seen from the statement of imputation supplied herewith show that both of you were addicted to drinking and had misbehaved under the influence of alcohol and by your conduct inside and outside the Court lowered the prestige of judiciary which amounts to gross misconduct and your behaviour is unbecoming of a Judicial Officer.

A detailed statement of imputation was also served upon the petitioner and Mr.R.A.Pawar along

with a list of documents and a list of witnesses. This petitioner gave reply to the charges and to the memorandum denying all the charges. After holding enquiry, examining witnesses and considering all submissions made by this petitioner, the Enquiry Officer - the II Addl.District Judge & Addl. Sessions Judge, Thane submitted his report, which is at Annexure A-7 to this Petition, in the name of Preliminaries, holding that the charges levelled against the petitioner were proved and the conduct of the petitioner is unbecoming of a judicial officer and it was a gross misconduct lowering down the prestige of judiciary.

3. It is to be noted that before coming to this conclusion, the Enquiry Officer had considered the following points for determination and had given the findings thereon.

	POINTS	FINDINGS
1)	Is it proved that on 22.11.99 delinquent No.2 entered in the house of delinquent No.1 in	

search of Balu Morghe after assaulting Balu Morghe and at that time, delinquent No.2 was holding the stick ? Yes.

2) Is it proved that on 22.11.99 at about 10.00 p.m. after entering into the house of delinquent No.1, delinquent No.2 enquired about Balu and then delinquent No.1 explained at that time, delinquent No.2 to delinquent No.1, due to which delinquent No.1 fell down? Yes.

3) Is it proved that when Balu started running, delinquent No.2 chased said Balu ? Yes.

4) Is it proved that, on visit of the then Hon’ble District & Sessions Judge, delinquent No.2 expressed the regrets,

apologize and when that was made in black and white, delinquent No.2 suddenly changed his stage and refused to sign and backed out from the admission ? Yes.

5) Is it proved that the delinquent No.2 was addicted to drink, used to abuse and intimidate staff members? Yes.

6) Is it proved that the behaviour conduct, attitude and acts of commission and omission of the delinquent No.2 inside and outside the court lowered the prestige of judiciary and behaviour was unbecoming of a judicial officer? Yes.

Then the report of the Enquiry Officer and record of the Enquiry proceedings were placed before the Hon’ble the Chief Justice, and the Judges of the

Disciplinary Committee and, the following decision was taken by the Committee :-

> "Discussed.
>
> Having considered the record of the enquiry and the report of the Enquiry Officer, it was decided to issue notice to the delinquent Judicial Officer Shri R.R.Kale to show cause as to why findings and reasons recorded by the Enquiry Officer may not be accepted and after considering the representation, the findings and reasons recorded by the Enquiry Officer are accepted, why one of the major penalties including penalty of dismissal from service as prescribed by Rule 5(1) (vii) to (ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 may not be imposed upon him.
>
> Show cause notice shall be accompanied by the report of the Inquiring Authority."

Accordingly show cause notice was served upon the

petitioner. This letter calling reply to the show cause notice is dated 5th February 2004. The petitioner gave his reply to the show cause notice vide Annexure A-9 of this Petition. The main grievance of the petitioner was that the then District Judge, who had submitted his report, was not examined and that has resulted in denial of an opportunity to cross examine Mr.Kakade. He also denied again the charges levelled against him; and his contention was that the then District Judge Mr.Kakade was not examined because he was then elevated as a Judge, High Court, Bombay. Thereafter the Disciplinary Committee in its meeting took the following decision :-

> "It was decided to reject the request of the delinquent Judicial Officer for giving him personal hearing in view of the Judgment dated 8th March 2002 in O.S. Writ Petition No.602/1999 reported in 2002 (2) Mh.L.J.882."
>
> Having considered the representation the dated 23rd February 2004 of the delinquent - Judicial Officer in response

to the show cause notice issued to him and in the light of the material on record coupled with the report of the Enquiry Officer, it was decided to reject the representation of the delinquent-Judicial Officer and to accept the findings recorded by the Enquiry Officer as the same are well founded.

Looking to the gravity of the charges proved, it was decided to impose upon the delinquent Judicial Officer major penalty of dismissal from service as prescribed under Rule 5(1)(ix) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979."

4. Thereafter the Government of Maharashtra, by an order dated 13th August 2004, which is Annexure A-10 of this Petition, dismissed the petitioner from service from the date of receipt of the order. It is against this dismissal that the present petition is filed. Reply has been filed to this petition by the then Registrar of the High Court, Appellate Side.

5. Shri. Anturkar, the learned Advocate appearing for the petitioner, wanted us to go through the entire evidence recorded by the Enquiry Officer and to show that the incident alleged in the charges is false. He contended that Balu - the victim of the alleged assault by the petitioner with hockey stick was not examined; that there was no evidence that the petitioner was habituated to drinking and on the night of the incident he was heavily drunk. He also contended that non-examination of the then District Judge Mr.Kakade has resulted in serious prejudice because the petitioner could not get an opportunity to cross examine the District Judge. He also contended that the petitioner had never agreed to tender apology and had never retracted from doing so, therefore, the charges in that regard were false.

6. Mr.Kumbhakoni, the Associate Advocate General appearing for the respondents/State, tendered before us a copy of writing given by other delinquent Mr.R.A.Pawar. This writing is in Marathi. It is addressed to the District Judge by both Mr.R.A.Pawar and Mr.S.S.Kale wherein it is expressed that both these

delinquents have submitted their respective reports separately in respect of the incident dated 22.11.99, that the District Judge has come to Bhiwandi to enquire into the matter; he had made preliminary enquiry; there were discussions with him and, therefore, both these delinquents have agreed to tendered apology and and are, therefore, tendering that written apology. Mr.Kumbhakoni contended that other delinquent Mr.R.A.Pawar put his signature and then at that time this petitioner refused to sign the apology letter. According to Mr.Kumbhakoni, if the District Judge has come to know of such incident, then his visit to Bhiwandi was most natural, his making inquiry from the delinquents was also natural; his making preliminary enquiry was also natural and, the fact that he persuaded both of them to tender apology was most natural. He also contended that no motive could be attributed to the District Judge while discharging his duty honestly and sympathetically with the delinquents and when if the District Judge makes a report and states that the present petitioner at the last moment refused to sign the letter of apology then this becomes a very serious case particularly when the apology came to be signed by other

delinquent Mr.R.A.Pawar.

7. Apart from these submissions on merits, Mr.Kumbhakoni strongly contended that when the petitions of such type are filed by the Judicial Officers in the High Court against the orders of their dismissal, the Division Bench is not supposed to sit in appeal over the decision of the Disciplinary Committee and warrant thread-bare scrutiny of the evidence. Mr.Kumbhakoni has relied upon the judgment of the Supreme Court in the case of **The High Court of Judicature at Bombay v/s. Shashikant S. Patil and another, reported in (AIR 2000 SC 22)**. That judgment was the outcome of the Division Bench of this Court. The facts of that case were that a judicial magistrate has been disrobed of his judicial vestment by a panel of five judges of the Bombay High Court on the administrative side. This was a sequel to an innocent litigant being wrongfully arrested, handcuffed and paraded in public. But two other judges of the same High Court, on the judicial side, ordered him to be rerobed with full chasuble. That judgment of the Division Bench was challenged by the Registrar of the High Court of Bombay by special leave.

. In this background, the Supreme Court made the following observations about the judgment of the Division Bench.

> "The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived ;at

such a conclusion, or grounds very similar to the above. But we cannot overlook that the departmental authority (in this case the Disciplinary Committee of the High Court) is the sole Judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.

In State of Andhra Pradesh v. S.Sree Rama Rao (1964) 3 SCR 25 : (AIR 1963 SC 1723) this Court has stated so and further observed thus :

. The High Court is not constituted in a proceedings under Art.226 of the Constitution as a Court of appeal over the decision of the authorities holding departmental enquiry against a public servant: it is concerned to determine

whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf and whether the rules of natural justice are not violated. Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Art.226 to review the evidence and to arrive at an independent finding on the evidence."

"The above position has been reiterated by this Court in subsequent decisions. One of them is B.C.Chaturvedi v. Union of India (1995) 6 SCC 749 : (1995 AIR SCW 4374 : AIR 1996 SC 484 : 1996 Lab IC 462)."

The reasoning of the High Court that when the Disciplinary Committee differed from the finding of the Inquiry Officer it is

imperative to discuss the materials in detail and contest the conclusion of the Inquiry Officer, is quite unsound and contrary to the established principles in administrative law. The Disciplinary Committee was neither an appellate nor a revisional body over the Inquiry Officer’s report. It must be borne in mind that the inquiry is primarily intended to afford the delinquent officer a reasonable opportunity to meet the charges made against him and also to afford the punishing authority with the materials collected in such inquiry as well as the views expressed by the Inquiry Officer thereon. The findings of the Inquiry Officer are only his opinion on the materials, but such findings are not binding on the disciplinary authority as the decision making authority is the punishing authority and, therefore, that authority can come to its own conclusion, of course bearing in mind the views expressed by the Inquiry Officer. But it is not necessary that the disciplinary authority should "discuss materials in

detail and contest the conclusions of the Inquiry Officer". Otherwise the Position of the disciplinary authority would get relegated to a subordinate level."

"Legal position on that score has been stated by this Court in A.N.D'Silva v. Union of India (1962 Supple (1) SCR 968 : (AIR 1962 SC 1130), that neither the findings of the Inquiry Officer nor his recommendations are binding on the punishing authority. The aforesaid position was settled by a Constitution Bench of this Court way back in 1963. (Union of India v. H.C.Goel, (1964) 4 SCR 718 : (AIR 1964 SC 364). The Bench held that "the Government may agree with the report or may differ, either wholly or partially, from the conclusion recorded in the report." Their Lordships laid down in the following principle :

. "If the report makes findings in favour of the public servant and the Government disagree with the said findings and holds that the charges

framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf."

"Thus the Division bench of the High Court has not approached the question from the correct angle which is evident when the Bench said that it is imperative for the Disciplinary Committee to discus materials in detail and contest conclusions of the Inquiry Officer. The interference so made by the Division Bench with a well considered order passed by the High Court on the administrative side was by overstepping its jurisdiction under Article 226 of the Constitution."

"It is the Full Court of all Judges of the High Court of Bombay which has authorised the Disciplinary Committee of five Judges of that High Court to exercise the functions of the High Court in respect of punishment of judicial

officers. Such functions involve exercise of the powers envisaged in Article 235 of the Constitution. It is the constitutional duty of every High Court, on administrative side, to keep guard over the subordinate judiciary functioning within its domain. While it is imperative for the High Court to protect honest judicial officers against all ill conceived or motivated complaints, the High Court cannot afford to by-pass any dishonest performance of a member of the subordinate judiciary. Dishonesty is the stark antithesis of judicial probity. Any instance of a High Court condoning or compromising with a dishonest deed of one of its officers would only be contributing to erosion of the judicial foundation. Every hour we must remind ourselves that judiciary floats only over the confidence of the people in its probity. Such confidence is the foundation on which pillars of the judiciary are built."

"The Judges, at whatever level may be,

represent the State and its authority, unlike the bureaucracy or the members of the other service. Judicial service is not merely an employment nor the Judges merely employees. They exercise sovereign judicial power. They are holders of public offices of great trust and responsibility. If a judicial officer "tips the scales of justice its rippling effect would be disastrous and deleterious." Dishonest judicial personage is an oxymoron. We wish to quote the following observations made by Ramaswamy, J. in High Court of Judicature at Bombay v. Shirishkumar Rangrao Patil (1997) 6 SCC 339 : (1997 AIR SCW 2592 : AIR 1997 SC 2631 :

. "The lymph nodes (cancerous cells) of corruption constantly keep creeping into the vital veins of the judiciary and the need to stem it out by judicial surgery lies on the judiciary itself by its self-imposed or corrective measures or disciplinary action under the doctrine of control enshrined in Articles

> 235, 124(6) of the Constitution. It would, therefore, be necessary that there should be constant vigil by the High Court concerned on its subordinate judiciary and self-introspection."
>
> "When such a constitutional function was exercised by the administrative side of the High Court any judicial review thereon should have been made not only with great care and circumspection, but confining strictly to the parameters set by this Court in the aforecited decisions. In the present case, as per the judgment under appeal the Division Bench of the Bombay High Court appears to have snipped off the decision of the Disciplinary Committee of the High Court as if the Bench had appeal powers over the decision of the five judges on the administrative side. At any rate the Division Bench has clearly exceeded its jurisdictional frontiers by interfering with such an order passed by the High Court on the administrative side."

The result of the aforesaid case is that the

Appeal filed by the High Court of Judicature at Bombay was allowed and the Judgement of the Division Bench was set aside.

8. Mr.Kumbhakoni for the State therefore urged that looking to the serious charges of assaulting victim Balu and fisting between two judges under the influence of liquor, agreeing to tender apology, then refusing to do so, are the circumstances which are required to be looked at in the background of the aforesaid observations of the Supreme Court. Mr.Kumbhakoni also urged that there were no violence of principles of natural justice or violence of statutory regulations prescribing the mode of inquiry. He contended that it cannot also be said that the decision of the Disciplinary Committee was vitiated by considerations extraneous to the evidence and/or merits of the case. Therefore, according to him, the evidence that was recorded and collected was sufficient to hold that the conclusion arrived at against the present petitioner about his guilt in respect of the charges framed was correct and does not require to be interfered with.

9. Mr.Kumbhakoni, the Associate Advocate General, for the respondents also emphasised upon the findings and the aforesaid observations of the Supreme Court as under :-

> Whether there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence.

Mr.Kumbhakoni, therefore, contended that there was more than sufficient evidence to support the charges and, therefore, this Court could not go into the aspect urged by the learned advocate Mr.Anturkar appearing for the petitioner.

10. The aforesaid judgment of the Supreme Court is absolutely clear. The powers of the High Court on judicial side in such matters are

specifically laid down by the Supreme Court as will be clear from the paragraphs reproduced above from the said judgment. We have gone through all the evidence on record and the materials available and the conclusions arrived at by the Enquiry Officer and the decision taken by the Disciplinary Committee. There is sufficient strong evidence on record in respect of the charges levelled against the petitioner. There is no violation of the principles of natural justice and/or no violation of statutory regulations prescribing the mode of said inquiry and the decision is not vitiated by considerations extraneous to the evidence and merits of the case. Similarly the conclusions arrived at by the authority are not arbitrary nor capricious and any reasonable man would come to the similar conclusions. Therefore, we do not find any merit in this petition. The same is dismissed. Rule is discharged.

[D.G.DESHPANDE,J]

[SMT.R.S.DALVI, J]